

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

942

CA 20-00170

PRESENT: WHALEN, P.J., CENTRA, NEMOYER, WINSLOW, AND BANNISTER, JJ.

JACLYN SAX, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

WOMEN AND CHILDREN'S HOSPITAL OF BUFFALO AND
KALEIDA HEALTH, DOING BUSINESS AS WOMEN AND
CHILDREN'S HOSPITAL OF BUFFALO,
DEFENDANTS-RESPONDENTS.

VIOLA, CUMMINGS & LINDSAY, LLP, NIAGARA FALLS (MATTHEW T. MOSHER OF
COUNSEL), FOR PLAINTIFF-APPELLANT.

CONNORS LLP, BUFFALO (CAITLIN E. O'NEIL OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Niagara County
(Matthew J. Murphy, III, A.J.), entered October 29, 2019. The order
granted the motion of defendants for summary judgment dismissing the
complaint.

It is hereby ORDERED that the order so appealed from is
unanimously reversed on the law without costs, the motion is denied,
and the complaint is reinstated.

Memorandum: Plaintiff commenced this action seeking damages for
injuries she allegedly sustained when she slipped and fell on snow and
ice on defendants' property. We agree with plaintiff that Supreme
Court erred in granting defendants' motion for summary judgment
dismissing the complaint. In moving for summary judgment, defendants
argued that there was a storm in progress at the time that plaintiff
fell. Assuming, arguendo, that the report of defendants' expert
meteorologist was sufficient to establish that there was a storm at
the location where plaintiff fell (*cf. Ayers v Pioneer Cent. Sch.*
Dist., 187 AD3d 1625, 1625 [4th Dept 2020]), we conclude that
defendants failed to meet their initial burden of establishing that
"plaintiff's injuries [were] sustained as the result of any icy
condition occurring during an ongoing storm or for a reasonable time
thereafter" (*Solazzo v New York City Tr. Auth.*, 6 NY3d 734, 735
[2005]; see *Schult v Pyramid Walden Co., L.P.*, 167 AD3d 1577, 1577
[4th Dept 2018]; see generally *Sherman v New York State Thruway Auth.*,
27 NY3d 1019, 1020-1021 [2016]). A property owner has no duty to
remove the snow "until a reasonable time ha[s] elapsed after cessation
of the storm" (*Witherspoon v Tops Mkts., LLC*, 128 AD3d 1541, 1541 [4th
Dept 2015] [internal quotation marks omitted]). In support of their

motion, defendants submitted the deposition testimony of plaintiff, who testified that it had snowed the night before the accident, but that it was not snowing at the time of her fall at 10:00 a.m. on the day of the accident. Plaintiff further testified that, while the sidewalks and ramp to the staircase of defendants' building had been cleared of snow, the steps were still snow-covered.

Inasmuch as defendants failed to meet their initial burden, the burden never shifted to plaintiff to raise a triable issue of fact (see *Schult*, 167 AD3d at 1577; see generally *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

Entered: February 5, 2021

Mark W. Bennett
Clerk of the Court